

DEPARTMENT OF FORESTRY AND FIRE PROTECTION
Title 14 of the California Code of Regulations

[Notice Published June 4, 2004]

NOTICE OF PROPOSED RULEMAKING

STATE RESPONSIBILITY FEES

The California Department of Forestry and Fire Protection (CDF) proposes to adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

CDF proposes to amend the following sections of Title 14 of the California Code of Regulations (14 CCR), Chapter 13:

Adopt all new sections to 14 CCR CHAPTER 13 § 1665 as follows:

§ 1665.1 Authority

§ 1665.2 Definitions

§ 1665.3 Determination of Eligible Parcel

§ 1665.4 Imposition of the Benefit Fee

§ 1665.5 Requests for Review and Refunds

PUBLIC HEARING

CDF will hold a public hearing starting at 1:00 P.M., on Tuesday, July 20, 2004, at the Resources Building Auditorium, 1st Floor, 1416 Ninth Street, Sacramento, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the *Informative Digest*. CDF requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code § 11125.1, any information presented to CDF during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by CDF and shall be made available upon request.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to CDF. The written comment period ends at 5:00 P.M., on Monday, July 19, 2004. CDF will consider only written comments received at the Department office by that time (in addition to those written comments received at the public hearing). CDF requests, but does not require, that persons who submit written comments to CDF reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments may be submitted by U.S. mail to the following address:

Dean Cromwell
SRA Fee Project Manager
California Department of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244-2460

Written comments can also be hand delivered or sent by courier to the contact person listed in this notice at the following address:

California Department of Forestry and Fire Protection
1300 U Street
Sacramento, CA 95818

Written comments may also be sent to CDF via facsimile at the following phone number:

(916) 324-1180

Written comments may also be delivered via e-mail at the following address:

sraissues@fire.ca.gov

AUTHORITY AND REFERENCE

Under the authority of PRC 4139, CDF is adding new Chapter 13 to Title 14 California Code of Regulations. Within this chapter, CDF is adding Sections 1665.1-1665.5. The statute being implemented, interpreted and made specific is Chapter 741/Statutes 2003 that added PRC Sections 4138-4140.5. References include Sections 4102, 4111, 4114, 4125, and 4138 of the Public Resources Code, Section 53087.4 of the Government Code and Sections 155.20 and 5097 of the Revenue and Taxation Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Section 4139 of the Public Resources Code (PRC) imposes an annual "State Responsibility Area" (SRA) benefit fee for parcels located in whole or in part with in

SRA. The annual benefit fee is \$35 on each parcel of land located, in whole or in part, within the SRA. The \$35 fees for 2003-04 and 2004-05 are to be collected as a single levy of \$70 (\$35 + \$35) as part of the 2004-05 local tax bill. If the annual fee continues it would be \$35 per eligible parcel per year.

SRA is defined in PRC Section 4102 as those lands for which the Board of Forestry and Fire Protection has determined the State has financial responsibility for preventing and suppressing fires. Boundaries for such lands are made specific by CDF pursuant to the *State Responsibility Area Classification Key* adopted by the Board of Forestry pursuant to PRC 4125-4128. SRA lands roughly correspond to areas that are covered in timber and other vegetation, or contiguous rangelands, which provide watershed value. They do not include areas within federal ownership or within incorporated cities. SRA lands cover about 31 million acres in 56 counties and include an estimated 1.1 million parcels.

CDF is charged with implementing the SRA fee. The proposed regulations allow CDF to implement the fee in an orderly and efficient manner over the timeframe required. The regulations provide for a functional definition of parcel; specify how CDF will utilize non-CDF staff with expertise in fee administration to implement the fee; and create a process for parcel owners to request a review and refund of the fee.

PRC 4140 (b) makes funds available, upon appropriation by the Legislature, to CDF to provide fire prevention and suppression benefits to landowners in SRA. In addition, PRC 4140 (d) allows CDF to borrow against anticipated revenues from the fee to meet cash flow needs. For these sections to operate as envisioned, CDF must be able to collect the fee.

SPECIFIC PURPOSE OF THE REGULATION

The regulation requires CDF, in accordance with PRC 4139, to impose an annual SRA benefit fee for parcels located in whole or in part within SRA as defined in PRC Section 4102.

Section 1665.1 Authority: The purpose of this section is to identify that the regulation is intended to lay out procedures to implement SRA fees.

Section 1665.2 Definitions: This section provides definitions for terms used in the regulation.

Subsection 1665.2 (a) “Parcel”: This subsection provides a definition of “parcel” as real property delineated by an assessor parcel number.

Subsection 1665.2 (b) “Designated Fee Administrator”: PRC Section 4139 (g) allows the Department to contract for services related to establishment of the fee collection process. The creation of a “Designated Fee Administrator” indicates how this will occur.

Subsection 1665.2 (c) “State Responsibility Area”: The fee is to be administered in State Responsibility Areas (SRA). This subsection makes reference to the process by which SRA is determined and indicates the location of information regarding boundaries.

Subsection 1665.2 (d) “Benefit Fee”: This simply standardizes the term used to reflect the fire protection benefit fee imposed by PRC Section 4139 (a).

1665.3. Determination of Eligible Parcel: This section indicates that the determination of eligible parcels will be done statewide for the Department by its Designated Fee Administrator consistent with the definition of “parcel” and within the requirements of PRC 4139 (a).

Section § 1665.4. Imposition of the Benefit Fee: This section further clarifies parcels that are eligible for the fee.

Subsections (a) and (b): PRC Section 4139 forbids imposition of the SRA fee on parcels that are exempt from property taxes and on parcels owned by a public agency and located within the boundaries of a public agency. The subsection repeats these exclusions for the sake of clarity.

Subsection (c): This subsection removes parcels less than \$5000 in value. This standardizes an exclusion allowed by Section 115.20 of the Revenue and Taxation Code across all counties.

Subsection (d): This subsection clarifies that the fee applies only to real property.

Subsection (e): “Parcel” as defined by proposed 14 CCR 1665.2(a) uses real property as delineated by an Assessor Parcel Number. Consistent with common assessment engineering practice, the subsection specifies that the fee should not be imposed on parcels created by the assessor for administrative purposes, such as revenue boundaries or changes in map book pages.

Section § 1665.5. Requests for Review and Refunds: This section indicates the process by which parcel owners may request review of their fees and sets in place a process to respond.

Subsection (a): This subsection specifies that a parcel owner who believes that an error has been made may request review with the Designated Fee Administrator.

Subsection (b): This subsection specifies the time period for review, makes such requests consistent with Revenue Taxation Code Section 5097 and provides a contact point for a request to review the fee. It also specifies that property owners must supply information supporting their review requests and allows the Designated Fee Administrator to request additional information as needed to facilitate the review.

Subsection (c): This subsection establishes a timeframe within which the Designated Fee Administrator completes a review and provides notice to the property owner.

Subsection (d): This subsection describes how the Designated Fee Administrator will handle fee modifications.

Subsection (e): This subsection describes how property owners may appeal the decision of the Designated Fee Administrator to CDF. Timeframes and notice to property owner requirements are set.

Subsection (f): This subsection describes how CDF will handle fee modifications. The section also indicates that the decision by the Department constitutes a final administrative action.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has determined the proposed action will have the following effects:

- **Costs or savings to any State agency:** The administrative costs to CDF are up to \$5 million in fiscal 2003-04 and 04-05. Administrative costs beyond that time are uncertain. Failure to pass the regulations could limit CDF in its ability to collect the fee or add to the administrative costs. If CDF cannot collect the fee and reduces its fire protection forces, there is an increased risk that more wildfires will escape, resulting in higher expenditures of State Emergency Fund dollars to pay for contracted forces to contain the escaped wildfires.
- **Cost to any local agency or school district that must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC § 17500:** PRC Section 4139 (e) mandates that counties implement the fee in the same manner and at the same time as secured property taxes. Notwithstanding other provisions of law, the section allows counties to increase the benefit fees by an amount to cover its reasonable cost of levying, collection, and apportionment and may retain the increased amount.
- **Other non-discretionary cost or savings imposed upon local agencies:** None
- **Cost or savings in federal funding to the State:** None
- **Significant Statewide Adverse Economic Impact Directly on Business:**

There is one kind of economic impact that comes simply from passage of PRC 4139 and not primarily from the proposed rule. Under PRC 4139 (a), any business that owns an eligible parcel will have to pay the fee of \$70.00 per eligible parcel on their 2004-2005 tax bill. If the annual levy continues it will be \$35 per eligible parcel per year. Added fees to businesses under PRC 4139, whether just the SRA

fee alone or in combination with other new unrelated fees, could have some adverse economic impact on businesses holding many parcels of land. Typical businesses affected are likely those holding parcels for timber harvesting, cattle grazing or agricultural purposes. The exact impact of the fee itself on businesses will be dependant on the number of eligible parcels they hold. Large industrial or large ranch owners with many eligible parcels would have the largest total fee amount assessed, while owners of individual parcels would experience the smallest dollar impact.

A second kind of economic impact may be related to the proposed rule itself. By defining “parcel” as real property with an APN, CDF is clarifying the standard to determine which parcels are eligible. This could affect the number of parcel owners who must pay the fee and perhaps the total fee that they will need to pay. CDF has mitigated a portion of this impact by removing parcels that have been created for administrative purposes as specified in the regulation and for parcel values less than \$5000.

A third possible economic impact could result if CDF cannot implement the fee. In the event the fee is not collected and CDF reduces its fire protection forces significantly, the number of smaller fires that escape and become larger fires reasonably can be expected to occur. Increased loss of life, property, and damage to natural resources can also be expected. This could cause increased costs to businesses and private persons.

In comparison to many other Western states, the addition of SRA fees would more closely approximate arrangements in those states where landowners contribute to fire protection budgets via fees or other methods. It is reasonable to assume that there should be little difference in the ability of businesses in the SRA to compete with other states because of the SRA fee.

- **Cost impacts on representative private persons or businesses:** Under PRC 4139 (a) there will be an impact of \$70 per eligible parcel on owners of every eligible SRA parcel on their 2004-2005 tax bill. If the annual levy continues it will be \$35 per eligible parcel per year. Property owners with multiple parcels subject to the SRA fee would face multiple billings of \$70 on their 2004-2005 tax bill. The total collected for each landowner depends on the number of eligible SRA parcels. The relative impact on landowners depends on a number of factors, such as income level. Except for clarifying “parcel” to mean APN and removing parcels that are created for administrative reasons or are of low value, the proposed rule will not change this impact.

In the event the fee is not passed and CDF reduces its fire protection forces significantly, the number of smaller fires that escape and become larger fires can reasonably be expected to occur. Increased loss of life, property, and damage to natural resources can also be expected. This could cause increased costs to private persons.

- **Significant effect on housing costs:** None
- **Adoption of these regulations will not:** (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.
- **Effect on small business:** See “Cost impacts on representative private persons or businesses” above.
- The proposed rules do not conflict with, or duplicate Federal regulations.

BUSINESS REPORTING REQUIREMENT

The regulation does not require a report that applies to businesses. It implements the statutory requirement to pay a fee as part of a tax bill. If landowners choose to request a review under proposed Section 14 CCR 1665.5, they will need to provide information needed in support of their request.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code § 11346.5(a) (13), CDF must determine that no reasonable alternative it considers or that has otherwise been identified and brought to the attention of CDF would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

CONTACT PERSON

Requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Dean Cromwell
SRA Fee Project Manager
California Department of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244-2460
(866) 878-2998 (toll free)

The designated backup person in the event Mr. Cromwell is not available is Christopher Zimny, Regulation Coordinator, California Department of Forestry and Fire Protection, P.O. Box 944246, Sacramento, CA 94244-2460, Telephone: (916) 653-9418

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

CDF has prepared an *Initial Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations. The statement is available from the contact person on request.

When the *Final Statement of Reasons* has been prepared, the statement will be available from the contact person on request.

A copy of the express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion, is also available from the contact person named in this notice.

CDF will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at the following address.

Resources Building
Room 1517
1416 9th St.
Sacramento, CA 94816
Attention: Christopher Zimny
Tel: (916) 653-9418

**All of the above referenced information is also available on the CDF website at:
http://www.fire.ca.gov/php/fire_er_sra.php**

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, CDF may adopt the proposed regulations substantially as described in this notice. If CDF makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before CDF adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- c) requested notification of the availability of such changes from CDF.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. CDF will accept written comments on the modified regulations for 15 days after the date on which they are made available.

/s/ Dean Cromwell

Dean Cromwell

SRA Fee Project Manager

California Department of Forestry and Fire Protection

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